IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 246 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MANUBHAI @ GULIYA JESINGBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 246 of 1995

MR PM VYAS for Petitioner No. 1

MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 24/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. This is an Appeal by the appellant - original accused challenging the judgment and order of the Additional Sessions Judge, Rajpipla in Sessions Case No.122/93 dated 10th February, 1995, whereby the Sessions Court found the appellant - accused guilty of an offence under Section 302 of the Indian Penal Code and sentenced him to imprisonment for life, but did not impose any fine on the ground that the accused - convict was of a backward class, and acquitted the accused in respect of an offence under Section 135 of the Bombay Police Act.

2. The prosecution case as unfolded by the evidence on record, and which has been accepted by the Sessions Judge, is to the effect that one Talshibhai Ramabhai had been murdered by the accused on 7th March, 1993 as per the complaint of a neighbour of the deceased namely Ishwarbhai Damjibhai, of the same date.

The complaint filed by the complainant states that the houses of the complainant and that of the deceased are adjoining each other, and that therefore the complainant, the deceased and the mother and wife of the deceased are neighbours. After Ramabhai, the father of the deceased Talshibhai, had expired, the agricultural land of the deceased father was mutated in the name of the widow Kamliben (mother of the victim) and the said land was managed and operated upon by Kamliben and her son Talshibhai (the victim). This land was eagerly sought after by the accused which resulted into a litigation between the parties, which ultimately resulted in favour of Kamliben (the mother of the victim). Due to this, the accused was enraged and on 7th March, 1993 (which day was the Holy Festival) at about 8:30 p.m., the accused came to the house of the victim, entered the court yard and shouted "Talshi Rama, come out". On hearing this shouts, the victim Talshibhai came out of his house into the court yard followed by the victim's wife and the victim's mother. At this point, the accused took out his knife and stabbed the victim on the front life side of the victim's chest. The victim collapsed and the accused ran away. The victim died soon thereafter on the spot.

It was this case of the prosecution, as per the impugned judgment and order, that has been abundantly proved by the prosecution beyond reasonable doubt.

3. Learned counsel for the appellant has taken us in great detail through the evidence on record, and we have

also perused the impugned judgment and order carefully. As a result of this close scrutiny we are satisfied that the judgment of conviction and sentence is eminently sustainable and does not require any interference by way of present appeal.

It may be noted here that the learned counsel for the appellant has not raised any substantial contention or any specific point or ground which requires to be specifically dealt with. The substance and the nature of the arguments advanced by the learned counsel for the appellant is only to the effect that the prosecution has failed to make out the case.

4. It is in this context that we may examine the evidentiary material on record.

5. In this context it would be more advantageous to categorized the prosecution evidence. The first category is of those witnesses who are eye-witnesses to the incident. There are five eye-witnesses namely Ishwarbhai Damjibhai (Ex.15) who is the complainant, Niruben Talshibhai (Ex.17) who is the wife of the victim and deceased, Kamliben Ramabhai (Ex.18) who is the mother of the victim and deceased, another eye-witness Talshibhai Jesanbhai (E.19) who is a customer who happened to be on the spot at the relevant time and was purchasing 'beedies' at the shop opposite the court yard where the incident occurred, and Jeshalbhai Delabhai (Ex.20) who is an independent and unrelated witness who happened to live in the same vicinity.

6. We may deal with these eye-witnesses collectively inasmuch as each of these witnesses, even after their depositions are examined individually, reiterate substantially the same event, or the course of the events as they occurred before each of these witnesses. The substance of what each of these witnesses has stated, and which has not been contradicted in the cross-examination and/or through their statements before the police, is that the event occurred at about 8:30 p.m. when the accused approached the house of the victim while shouting and giving abuses, that the accused entered the court yard of the house of the victim and shouted for the victim to come out, and when the victim came out, the accused uttered a few expletives and stabbed the victim on the front left side of the victim's chest. At that point of time Niruben the wife of the victim, and Kamliben the mother of the victim were also present, inasmuch as they had followed the victim into the court yard on hearing the shouts and demands of the accused.

No substantial contradiction or admission has been obtained in the cross-examination of these eye-witnesses. Their presence at the scene of offence was natural and normal, under the circumstances established by the prosecution evidence. Although it could be said that Niruben and Kamliben were relatives of the victim, the other three eye-witnesses namely Ishwarbhai (Ex.15), Talshibhai (Ex.19) and Jeshalbhai (Ex.20) are not relatives, are known to both sides equally, and are near neighbours who happened to be present for natural and reasonable causes as explained by each of them in their deposition.

Each of these eye-witnesses has categorically deposed as to how the event unfolded and as to how the accused stabbed the victim.

It is also pertinent to note that the learned Sessions Judge has taken care and has specifically questioned each of these five eye-witnesses as to the lighting conditions which prevailed at that point of time and place. Each of the witnesses has explained that there was sufficient light from electric bulbs which were turned on in the adjoining houses, though the house of the victim did not have any electric bulb. In fact, Jeshalbhai (Ex.20) has answered the query of the Court in a very categorical manner by explaining that there was light fallling into the court yard of Ishwarbhai Damjibhai (the complainant), and also that the bulb was of 200 watts, since such light is necessary to look after the customers which would come to his shop. Furthermore, there is no controversy that the event took place on the night of Holi, which is always a full-moon night. Another factor which requires to be kept in mind is that the event took place in a very small village where all the witnesses knew the accused. It is also pertinent to note that the aforesaid explanation offered by Jeshalbhai (Ex.20) to the question put by the Court, was offered to the learned counsel for the accused for further cross-examination. However, this opportunity was not availed by the learned counsel for the accused.

7. Taking a composite view of the evidence and deposition of these eye-witnesses, it is impossible to accept a bare suggestion on the part of the accused that the accused has been falsely implicated on account of an on-going dispute pertaining to the land, or that the injured was not in fact stabbed by the accused but suffered the injury because he fell upon a plough. In fact, the panchnama of the scene of offence is at Ex.28,

which on the face of it describes the court yard of the house of the victim, as deposed by each of the eye-witnesses. This panchnama does not in any manner disclose the presence of any such plough or even any other implement which could possibly have caused the injury to the victim as suggested by the accused.

8. The medical evidence consists of the deposition of Dr.Devendra Patel who had conducted the post-mortem on the victim (deceased). He has also proved the post-mortem notes at Ex.12.

The injury as found on the body of the deceased was a stab wound, 1" x 1/2" x cavity deep, 1" below the nipple on the left side in the 5th inter costal space. This incised stab wound had punctured the pleura, crushed the lower lobe of the left lung, punctured the pericardium of the heart, punctured the lower and rear portion of the heart, punctured the left lobe of the diaphragm, and had also cut into the pancreas and the left lobe of the liver. In the opinion of the doctor the death of the victim was due to the serious injury caused by the stab wound to the lungs, heart, pancreas and liver. He has also stated categorically that these injuries are sufficient in the ordinary course of nature to cause death. What is significant is that the defence theory put up by the nature of the cross-examination of this doctor has been vehemently denied by him. The doctor empathetically denies that this injury could be sustained by a person by falling upon the hard and sharp object. He specifically denies the suggestion that such an injury could be caused by a person falling upon the sharp end of a plough.

Even otherwise, the Discovery Panchnama at Ex.26, Report of the F.S.L. at Ex.34 and the Serology Report at Ex.35 conclusively establish that the Blood Group of the victim was 'A' Group, and that the knife discovered by the accused was stained also with 'A' Group blood.

9. So far as an independent examination of the evidence reveals, we are in complete agreement with the appreciation of evidence arrived at by the Sessions Court and the conclusion drawn therefrom. Although as aforesaid no specific contentions have been raised as to why any specific piece of evidence ought not to have been accepted, we have in our turn taken an independent view of the evidence on record, both individually and collectively. As aforesaid, obviously the defence version that the injured might have died by falling upon the sharp end of a plough, can not possibly be accepted

or sustained both in view of the medical evidence and also in view of the unimpeachable evidence of five eye-witnesses.

10. In the premises aforesaid, we find that there is no substance in the present Appeal and the same is, therefore, dismissed.

(Y. B. Bhatt, J.)

(J. R. Vora, J.)

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